#### Before the

# FEDERAL COMMUNICATIONS COMMISSION

### Washington, DC 20554

In the Matter of

Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses

WT Docket No. 12-4

Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses

## REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND

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March 26, 2012

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### REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Montgomery County, Maryland (the "County"), files these reply comments in the above-captioned proceeding to express the County's strong opposition to the Applications<sup>1</sup> and its strong support for the Petition to Deny the Applications filed by Public Knowledge, *et al.*<sup>2</sup>

The County also urges the Commission—in this proceeding and/or by initiating a separate proceeding – to exercise its authority to halt the implementation of the Commercial Agreements entered into between the Applicant Verizon Wireless and the cable operator Applicants in order to prevent these anti-competitive and unlawful arrangements from harming competition and consumers.

<sup>&</sup>lt;sup>1</sup> Applications were filed on December 16, 2011 by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and SpectrumCo, LLC ("SpectrumCo"), and on December 21, 2011 by Verizon Wireless and Cox TMI Wireless, LLC, a subsidiary of Cox Communications, Inc. ("Cox"), to assign spectrum licenses held by SpectrumCo and Cox Wireless to Verizon Wireless. See also, Public Notice, DA-12-67, WT Docket No. 12-4 (rel. Jan. 19, 2012); Order, DA-12-367, WT Docket No. 12-4, (rel. Mar. 8, 2012) ("Applications").

<sup>&</sup>lt;sup>2</sup> Petition to Deny of Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, Access Humboldt, Center For Rural Strategies, Future Of Music Coalition, National Consumer Law Center, On Behalf Of Its Low-Income Clients, and Writers Guild Of America, West, WT Docket No. 12-4 (filed Feb. 21, 2012) ("Petition to Deny").

# I. THE COMMISSION MUST REVIEW THE APPLICATIONS IN CONJUNCTION WITH THE RELATED COMMERCIAL AGREEMENTS

The Commission has before it two Applications which, if granted on the terms sought by the Applicants, would give a green light for most of the dominant players in the communications services industry - Verizon Wireless, Comcast, Time Warner Cable, Bright House Networks, and Cox Communications – to join forces on an unprecedented scale. The Applicants characterize the transaction as involving "only assignments of spectrum". Yet at the same time that the proposed spectrum sale was agreed, the cable operator Applicants also entered into commercial agreements ("Commercial Agreements") with Verizon Wireless to sell each other's services, and to establish a "technology joint venture to develop innovative technology and intellectual property that will integrate wired video, voice, and high-speed Internet with wireless technologies."<sup>4</sup> The Applicants maintain that these Commercial Agreements "have no bearing on whether the spectrum sale is in the public interest [and] do not require Commission approval" because, among other reasons, "the proposed spectrum license sale and the Commercial Agreements are not contingent upon each other" and "the Commission – rightly – has never asserted authority to review such agreements or required parties to file such agreements, and there is no basis to do so here."5

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<sup>&</sup>lt;sup>3</sup> Verizon Wireless/SpectrumCo Application, FCC Form 603 Exhibit 1, Public Interest Statement, p. 1.

<sup>&</sup>lt;sup>4</sup> Press Release, Comcast Corp., "Comcast, Time Warner Cable, and Bright House Networks Sell Advanced Wireless Spectrum to Verizon Wireless for \$3.6 Billion; The Companies Also Announce Commercial Agreements That Will Deliver Mobile Products To Consumers (Dec. 2, 2011), <a href="http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1134&SCRedirect=true">http://www.comcast.com/About/PressRelease/PressRelease/PressReleaseDetail.ashx?PRID=1134&SCRedirect=true</a> (last accessed March 22, 2012).

<sup>&</sup>lt;sup>5</sup> Ex Parte Notice and Submission of Highly Confidential Documents, to Marlene H. Dortch, Secretary, FCC, from J.G. Harrington, Counsel to Cox TMI Wireless, LLC dated January 18, 2012, p. 2 (Verizon Wireless-Cox commercial agreements); Ex Parte Notice and Submission of Confidential and Highly Confidential Documents Pursuant to First and Second Protective Orders, to Marlene H. Dortch, Secretary, FCC, from Michael H. Hammer, dated January 18, 2012, p. 2 (Verizon Wireless-SpectrumCo commercial agreements).

The public interest requires that the Commission review the Application and the related Commercial Agreements together because that is how they will be implemented and will impact consumers. Both the scope and scale of the arrangements for joint marketing and collaboration in the Commercial Agreements are unparalleled.<sup>6</sup> The negative impact on the competitive landscape in Montgomery County will be substantial, as it will be elsewhere in Maryland, and in markets across the nation.

# II. THE COMMERCIAL AGREEMENTS ARE UNLAWFUL AND THE COMMISSION HAS AMPLE AUTHORITY TO TAKE ENFORCEMENT ACTION

The County strongly supports the legal arguments of numerous filers<sup>7</sup> that demonstrate that (i) the commercial agreements violate provisions of the Communications Act, including 47 U.S.C. §572 (concerning joint ventures among cable operators and telephone companies) and 47 U.S.C. §548 (concerning unfair methods of competition or unfair or deceptive acts or practices) and (ii) the Commission has ample authority to take enforcement measures under those provisions.

# III. THE COMMERCIAL AGREEMENTS ARE ANTI-COMPETITIVE AND WILL HURT CONSUMERS

The County fully supports the comments filed by other representatives of consumer and public interests in Maryland that demonstrate that the proposed spectrum sales and the Commercial Agreements will have harmful competitive effects in the state, and in particular will mean that the City of Baltimore will be unlikely to see a competitive broadband service offering

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<sup>&</sup>lt;sup>6</sup> The examples of agreements cited by the Applicants, *id.*, (eg. agency deals with retailers such as Radio Shack or AT&T's deal with a satellite provider) are not comparable.

<sup>&</sup>lt;sup>7</sup> See Petition to Deny at pages 36, 41-42, 45-46; RCA - The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions filed in WT Docket No. 12-4 on February 21, 2012 at page 41; Petition to Deny of the Rural Telecommunications Group, Inc. filed in WT Docket No. 12-4 filed on February 21, 2012 at page 8.

by Verizon.<sup>8</sup> Residents of Montgomery County will also be negatively impacted if these Applications are approved and the Commercial Agreements are allowed to stand.

# A. <u>Although Consumers Have Seen Some Benefits, Head to Head Competition</u> <u>Between Verizon and Comcast Has Not Resulted in Lower Cable Rates for</u> Consumers

Relatively speaking, Montgomery County has a more competitive cable market than many jurisdictions, as it has three wireline providers – Comcast, RCN and Verizon. Increased competition and choice generally benefits consumers because it leads providers to offer innovative services, better customer service, and higher broadband speeds than prior to competition. In addition, consumers feel empowered because if they are unhappy with their current service provider, they have an alternative.

However, competition has not resulted in lower prices for consumers in the County. Cable rates in most areas of Montgomery County were deregulated in 2009 as a result of the Commission's "effective competition" order. And, as the following charts and graphs show, even with head to head competition among these providers, prices for cable services and equipment continue to rise in the County.

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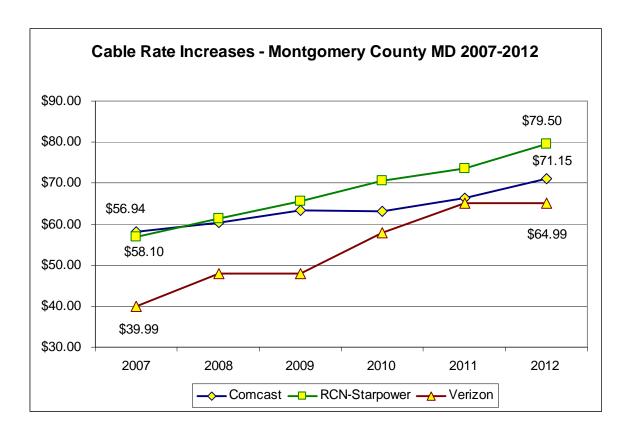
<sup>&</sup>lt;sup>8</sup> Letter from William H. Cole IV, Baltimore City Council to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed March 16, 2012); Letter from Curt Anderson, The Maryland House of Delegates to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed March 7, 2012); Letter from Roger Manno, The Senate of Maryland to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed March 20, 2012); Letter from Elbridge James, NAACP Maryland State Conference to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed March 8, 2012); Letter from Marceline White, Maryland Consumer Rights Coalition to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (March 15, 2012).

<sup>&</sup>lt;sup>9</sup> See attached, hereto as Exhibit A In the Matter of Comcast of Potomac, LLC Petition for Determination of Effective Competition in 13 Franchise Areas in Montgomery County, Maryland, MD, Memorandum Opinion and Order, DA 09-2192 (rel. October 8, 2009).

<sup>&</sup>lt;sup>10</sup> See also attached hereto as Exhibit B, In the Matter of Annual Assessment of the Status of Competition in the Market for Video Programming, MB Docket 07-269, Comments of Montgomery County, Maryland (filed July 8, 2011).

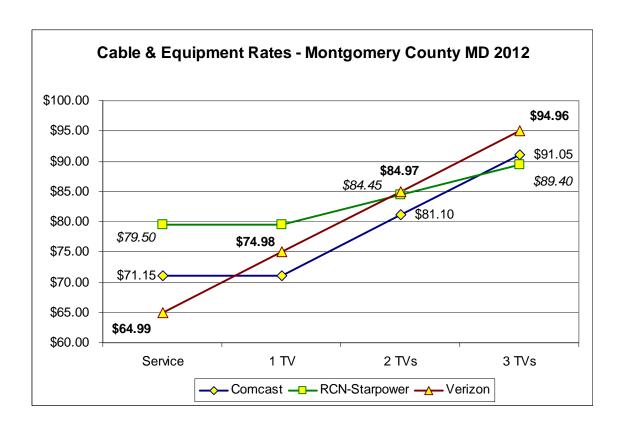
	Typical Cable Rates* - Montgomery County MD 2007-2012					
	2007	2008	2009	2010	2011	2012
Comcast	\$ 58.10	\$ 60.35	\$ 63.30	\$ 63.15	\$ 66.30	\$ 71.15
RCN-						
Starpower	\$ 56.94	\$ 61.44	\$ 65.50	\$ 70.50	\$ 73.50	\$ 79.50
Verizon	\$ 39.99	\$ 47.99	\$ 47.99	\$ 57.99	\$ 64.99	\$ 64.99

<sup>\*</sup>Price comparison of lowest priced package that contains CNN, ESPN, and History Channel (Comcast Digital Starter, RCN Digital Signature, Verizon Prime HD)



The above figures are for the cost of cable service itself. When one factors in the cost of renting equipment needed to watch all the programming in the service package on televisions in multiple rooms (the typical situation in a family home), the monthly cost of cable service is dramatically higher, as illustrated below using 2012 rates in Montgomery County.

2012 Cable Rates with Equipment - Montgomery County, MD Service **1 TV** 2 TVs 3 TVs \$ 71.15 \$81.10 \$ 91.05 Comcast \$ 71.15 RCN-Starpower \$ 79.50 \$ 79.50 \$ 84.45 \$ 89.40 \$ 64.99 Verizon \$ 74.98 \$ 84.97 \$ 94.96



It is evident that the existing "head to head" wireline competition in Montgomery County has provided no price relief to consumers; rather despite competition, year after year customers of Comcast and Verizon have experienced rate increases. Consumers cannot realistically expect to benefit if Comcast and Verizon Wireless are permitted to collaborate as envisioned in the Commercial Agreements. Comcast and Verizon will have even less incentive to compete on price going forward.

### B. <u>Permitting Cable/Telco Joint Marketing Will Provide A Disincentive To Build</u> <u>Out Competitive Broadband Networks</u>

Since the passage of the Telecommunications Act of 1996, the Commission has sought to create incentives for the private sector to build out competitive broadband networks and to expand wireless broadband. The spectrum transfer and the Commercial Agreements would not advance this purpose.

Comcast executives are touting the fact that the Commercial Agreements will permit cable operators to offer a "quad play" to consumers without building a wireless network. And, as noted in the filings of others, Verizon has refused to build out its cable broadband FiOS fiber network in Baltimore City. If Verizon is allowed to partner with Comcast to jointly market Verizon Wireless cell phone service, then Verizon will have even less incentive to build out FiOS in Baltimore or elsewhere. What is especially worrisome is that these Commercial Agreements provide a incentive for Verizon, particularly in areas where building costs are high (such as in urban areas) or where median incomes are lower, to *never* build out its FiOS network to provide a competitive choice for consumers in these markets.

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<sup>&</sup>lt;sup>11</sup> "Comcast Execs: Verizon deal to bring the 'quadruple play'" <a href="http://www.digitaltrends.com/mobile/comcast-execs-verizon-deal-to-bring-the-quadruple-play/">http://www.digitaltrends.com/mobile/comcast-execs-verizon-deal-to-bring-the-quadruple-play/</a> (last accessed March 26, 2012).

The County notes that however positive a "quad play" may sound on its face, the Commission should bear in mind, as the County demonstrated in a previous filing, the benefits of "bundling" go overwhelmingly to the providers, <u>not</u> to the consumers. See Exhibit B, Attachment 1, In the Matter of Annual Assessment of the Status of Competition in the Market for Video Programming, MB Docket 07-269, Comments of Montgomery County, Maryland (filed May 20, 2009) at 12-15.

<sup>&</sup>lt;sup>12</sup> See FN 8.

#### IV. CONCLUSION

The Applications and the Commercial Agreements are not in the public interest. The County urges the Commission to deny the Applications, and to take such other enforcement actions as the Commission deems necessary to halt the implementation of the Commercial Agreements.

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March 26, 2012

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Respectfully submitted,

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# **EXHIBIT A**

#### Before the **Federal Communications Commission** Washington, D.C. 20554

In the Matter of	)	
	)	
Comcast of Potomac, LLC	)	CSR 8188-E
Petition for Determination of Effective	)	
Competition in 13 Franchise Areas in	)	
Montgomery County, Maryland	j	

#### MEMORANDUM OPINION AND ORDER

Adopted: October 6, 2009 Released: October 8, 2009

By the Senior Deputy Chief, Policy Division, Media Bureau:

#### I. INTRODUCTION AND BACKGROUND

- Comcast of Potomac, LLC ("Comcast"), has filed with the Commission a petition 1. pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission's rules for a determination that it is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." The Communities are franchise authorities in some, but not all, of Montgomery County, Maryland (the "County"). Comcast alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended ("Communications Act")<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by Verizon Maryland Inc. ("Verizon").
- The County, on its own behalf and apparently on behalf of the individual Communities in the County, was granted two extensions of time in which to file oppositions to Comcast's petition. At the conclusion of the second extension, counsel for the County and those municipalities advised the Commission that they would not file any opposition.<sup>5</sup> No other filing has been made by any other franchise authority in the Communities. Accordingly, the petition is unopposed.
- In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, <sup>6</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.<sup>7</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present

<sup>&</sup>lt;sup>1</sup> See 47 U.S.C. § 543(1)(1)(D).

<sup>&</sup>lt;sup>2</sup> 47 C.F.R. 8 76.905(b)(4).

<sup>&</sup>lt;sup>3</sup> The complex relationship between the County and the Communities for purposes of franchising cable systems is described in Comcast of Potomac, LLC, Memorandum Opinion & Order DA 09-1489 (rel. June 30, 2009).

<sup>&</sup>lt;sup>4</sup> See Letters from Matthew C. Ames, Esq., Miller & Van Eaton, P.L.L.C., counsel for the County, to Steven A. Broeckaert, Senior Deputy Chief, Policy Bureau, dated Aug. 5 & 27, 2009.

<sup>&</sup>lt;sup>5</sup> E-Mail from Mr. Ames to John W. Berresford, Commission Attorney, dated Oct. 5, 2009, 10:49 A.M.; e-mail from David R. Podolsky, Esq., Stein, Sperling, Bennett, De Jong, Driscoll & Greenfieg, P.C., counsel for the municipal Communities, dated Oct. 5, 2009, 11:18 A.M.

<sup>&</sup>lt;sup>6</sup> 47 C.F.R. § 76.906.

<sup>&</sup>lt;sup>7</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

within the relevant franchise area.<sup>8</sup> For the reasons set forth below, we grant the petition based on our finding that Comcast is subject to effective competition in the Communities listed on Attachment A.

#### II. DISCUSSION

- 4. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier ("LEC"), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator. This test is otherwise referred to as the "LEC" test.
- 5. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area. It is undisputed that these Communities are served by both Comcast and Verizon, a local exchange carrier, and that these two MVPD providers are unaffiliated.
- 6. The "comparable programming" element is met if Verizon offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.<sup>12</sup> The petition includes a copy of Verizon's channel lineup, which shows its service including far more than the required numbers of channels.<sup>13</sup>
- 7. Finally, Comcast has demonstrated that the Verizon has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>14</sup>
- 8. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

<sup>&</sup>lt;sup>8</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>&</sup>lt;sup>9</sup> See 47 U.S.C. § 543(l)(1)(D).

<sup>&</sup>lt;sup>10</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-15 (1999) ("Cable Reform Order").

<sup>&</sup>lt;sup>11</sup> Petition at 5-15.

<sup>&</sup>lt;sup>12</sup> See 47 C.F.R. § 76.905(g).

<sup>&</sup>lt;sup>13</sup> See Petition at Exh. 21.

<sup>&</sup>lt;sup>14</sup> See Cable Reform Order, 14 FCC Rcd at 5305-06, ¶¶ 13-15. See also Petition at 6-15 & Exhs. 10-20.

#### III. ORDERING CLAUSES

- 9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast of Potomac, LLC, **IS GRANTED**.
- 10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.
- 11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert Senior Deputy Chief, Policy Division, Media Bureau

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<sup>&</sup>lt;sup>15</sup> 47 C.F.R. § 0.283.

#### ATTACHMENT A

#### **CSR 8188-E**

# COMMUNITIES SERVED BY COMCAST OF POTOMAC, LLC

CUID(s)		
MD0230		
MD0223, MD0275		
MD0466		
MD0276		
MD0231		
MD0233		
MD0234		
MD0476		
MD0465		
MD0222		
MD0227		
MD0226		
MD0236		
MD0328		
MD0343		
MD0341		
MD0347		
MD0345		
MD0340		
MD0346		
MD0342		
MD0224		
MD0349		
MD0344		

The Petition at 3 describes the 11 last-listed, indented areas as "unincorporated places, that are not self-governing, and are part of the single 'Unincorporated Montgomery County' Franchise Area."